

traversed.

Enclosed with the instant response is a Declaration under 37 C.F.R. 1.132 executed by Mr. Hitoshi Miura, an employee of Timcal Japan, which was a subsidiary of LONZA Ltd.. Timcal Japan is the current manufacture of LONZA KS-25 graphite powder. Mr. Miura confirms that graphite particles sold by Lonza and now Timcal under the product name KS-25 have an average particle size (d50) of 8-14 microns and a specific surface area of between 8 and 16 m²/g (See, also, the attached Timcal Group Technical Data Sheet for Timrex KS-25). Mr. Miura further declares that KS graphite powders cannot have an average particle size of 14 microns and a specific surface area of 1.5 m²/g. That is Mr. Miura confirms that it is not physically possible for a Lonza KS-25 graphite powder to have a specific surface area of 1.5 m²/g. Thus, the data recited in Embodiment 11 of the Yamada reference must be incorrect.

As the Office Action is understood, the rejections set forth in the July 31, 2002 office action has been maintained because the Yamada reference is an issued U.S. Patent and is allegedly presumed to be free of typographical errors.

Applicants respectfully disagree.

There is no presumption of validity provided to the specification of U.S. patents notwithstanding the presumption of validity granted to claims that depend from an invalid base claim. Moreover, the availability of Certificate of Correction practice recognizes that patents are frequently issued with errors or typographical errors. Thus, the position taken in the Office Action that the content of an issued U.S. Patent is presumed valid and therefore cannot contain typographical or clerical errors is not correct.

Based solely on the disclosure of Yamada, one of ordinary skill in the art would recognize that at least one specific surface area measurement recited therein for LONZA KS-25 graphite must be incorrect. There is an inherent inconsistency present in the

specification of Yamada which is sufficient to overcome any alleged presumption regarding the validity of the data disclosed therein.

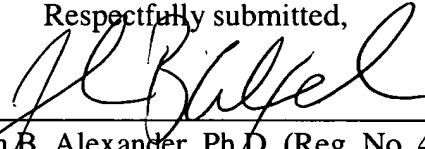
The Declaration of Mr. Miura filed herewith further supports the argument that there is a typographical or clerical error in the recitation of the specific surface area data presented by Yamada in Embodiment 11. That is, the Declaration executed by Mr. Miura, an expert familiar with the production and physical properties of LONZA KS-25 graphite powders, combined with the specification of Yamada taken in its entirety is sufficient to overcome any presumption about the alleged accuracy of the specific surface area measurement for LONZA KS-25 graphite recited in Embodiment 11.

Thus, for at least the reasons discussed herein, the rejection of the claims based on the Yamada reference should be withdrawn.

It is respectfully submitted that the subject application is in condition for allowance. Early and favorable action is requested.

Applicants believe that additional fees are not required for consideration of the within Response. However, if for any reason a fee is required, a fee paid is inadequate or credit is owed for any excess fee paid, you are hereby authorized and requested to charge Deposit Account No. **04-1105**.

Date: June 24, 2003

Respectfully submitted,

By: _____
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